

R. E. PUCKETT

IBLA 73-290

Decided December 28, 1973

Appeal from decision of Wyoming State Office, Bureau of Land Management, rejecting oil and gas lease offer W-38587.

Affirmed.

Oil and Gas Leases: Lands Subject to

Even assuming public land is erroneously designated in the public land records as having been granted to the State of Wyoming due to an improper resurvey, a noncompetitive offer to lease the land for oil and gas must be rejected until the error has been rectified and the availability of the land has been noted on the tract books.

Mineral Leasing Act: Lands Subject to--Oil and
Gas Leases: Lands Subject to--State Lands

Land, the title to which is not in the United States, is not subject to leasing under the terms of the Mineral Leasing Act.

APPEARANCES: R. E. Puckett, pro se.

OPINION BY MR. RITVO

R. E. Puckett has appealed from a decision dated January 31, 1973, by the Wyoming State Office, Bureau of Land Management, rejecting his noncompetitive oil and gas lease offer, W-38587, on the grounds that the United States does not own any mineral interest in the applied for lands.

Appellant's offer to lease, filed January 22, 1973, described the requested land as follows:

State: Wyoming County: Sweetwater

T. 15 N., R. 103 W., 6th P.M.

Sec. 2: Lots 6, 7, 8, S 1/2 NW 1/4, SW 1/4 NE 1/4

Sec. 3: Lot 5

T. 16 N., R. 103 W., 6th P.M.

Sec. 34: Lot 3

Sec. 35; S 1/2 SW 1/4, SW 1/4 SE 1/4

In his Statement of Reasons for Appeal, appellant states:

Your office reveals this tract is owned by the State of Wyoming in lieu of Section 36, Township 16 North, Range 103 West, 6th P.M. The State of Wyoming disclaims any interest in the tract included in this lease offer (W-38587). The county records reveal no patent of record indicating United States ownership and no taxes have ever been paid on these lands. It would appear the United States owns the property and a lease should be issued.

At the present time, the State of Wyoming is appealing to the Secretary of the Interior from a decision by the Bureau of Land Management's Wyoming State Office dated May 1, 1972, denying Wyoming its application for a patent to school section 36, T. 16 N., R. 103 W., 6th P.M. of the original survey 1/ on the ground that the land applied for was not the school section land designated upon resurvey of the township.

The government argues that Wyoming accepted the following designated lands in lieu of the original section 36:

T. 15 N., R. 103 W., 6th P.M. Wyoming

Sec. 2, Lots 6, 7, 8, SW 1/4 and S 1/2 NW 1/4

Sec. 3, Lot 5

1/ 43 U.S.C. § 871(a) states in pertinent part:

"The Secretary of the Interior shall upon the application by a State cause patents to be issued to the numbered school section in place, granted for the support of common schools by the Act approved February 22, 1889, by sections 870 and 871 of this title, and by any other Act of Congress, that have been surveyed, or may hereafter be surveyed, and to which title has vested or may hereafter vest in the grantee States, and which have not been reconveyed to the United States or exchanged with the United States for other lands."

T. 16 N., R. 103 W. 6th P.M. Wyoming
Sec. 34, Lots 2, 3
Sec. 35, S 1/2

The land office records state that this land, which includes all of the area applied for by appellant, was granted to the State of Wyoming pursuant to the act of July 10, 1890, 26 Stat. 222, admitting it to the Union.

The title dispute between the State of Wyoming and the United States has yet to be resolved.

Since the land appellant applied for is shown by the land office records to be state land, it would not be available for leasing, even if it were to be found to be public land, until the availability of the land was noted on the tract book. E. B. Todhunter, A-28197 (May 23, 1960); H. S. Davis, A-27758, (January 30 1959); E. A. Vaughey, 63 I.D. 85, 87 (1956); Sewell Thomas, A-27016, (December 22, 1954). In any case, a good part, if not all, of the land applied for by appellant appears to be situated within section 36 as originally surveyed. Such land is not available for lease since the legal title is in the State of Wyoming and not in the United States under either possibility. H. S. Davis, supra; Patricia T. Zebal, 65 I.D. 293, 299 (1958).

Therefore, pursuant to the authority delegated to the Board of Land appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Martin Ritvo, Member

We concur:

Douglas E. Henriques, Member

Anne Poindexter Lewis, Member

